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SUBJECT: GUATEMALAN ADOPTION CONTROVERSY: POLITICS, HUNGER
STRIKES AND AMCIT CHILDREN

REF: GUATEMALA 262

11. (SBU) SUMMARY: In a move that generated front-page coverage in Guatemala, prominent human rights defender Norma Cruz recently completed a 10-day hunger strike to demand that three children adopted by U.S. couples be returned to Guatemala. She is the recipient of the Secretary's Women of Courage Award. Cruz, First Lady Sandra Torres and other supporters claim the children were stolen from their birth mothers. The three children are now AMCITs. Torres raised the issue with Secretary Clinton at the Summit of the Americas in April, and subsequently met with the Ambassador. Cruz joined with the women who claim to be the children's mothers and other supporters in the hunger strike to demand that the adoptions be nullified and the children returned; the Guatemalan judiciary subsequently accepted the case. END SUMMARY.

The Background

12. (SBU) Prior to a new adoption law compliant with the Hague Convention on International Adoption, which went into effect on Dec. 31, 2007, Guatemala was one of the leading sources of children for U.S. couples seeking to adopt. In FY 2007, over 4,000 Guatemalan children were adopted by AMCIT couples. In Guatemala, lawyers or notaries served as intermediaries between birth parents and adopting couples. Typically notaries plus the agencies were paid around USD 50,000 for their services. The Solicitor General's Office (PGN) was the Guatemalan agency responsible for ensuring that children put up for adoption had been willingly relinquished by their birth parents. Guatemala did not require DNA testing to ensure that the relinquishing parent was a child's actual parent. In the 1990's the Embassy began requiring DNA testing before going forward with an adoption case.

13. (U) Before 2008, the procedure for adopting a child in Guatemala started with a notary serving as the point of contact between an adopting couple and a woman who wanted to relinquish her child. The notary would start the adoption process at his office and request the competent family court in Guatemala to perform a home study. At the same time, the prospective adoptive parent(s) or their Guatemalan attorney would go to USCIS for the adoption pre-approval. At this stage, the USG was the one requiring the DNA test. With USCIS pre-approval, the notary would go to the PGN in order to submit the adoption file and obtain a favorable resolution. Although the USG was the one requiring the DNA test, PGN would then use the DNA results as part of their review and favorable opinion. Once PGN issued a favorable opinion, the notary would authorize the final adoption deed in his "Protocolo." After the adoption was finalized, the adopting parents would apply for and receive a new Guatemalan birth certificate and passport in the baby's new name. At this point, the final paperwork would go to USCIS for approval. The child would be brought into the Consular

Section for the final adjudication of the I-600 (Petition to Classify an Orphan as an Immediate Relative) by USCIS and the issuance of an immigrant visa. In most cases the child would then become an AMCIT upon admission into a U.S. Port of Entry (POE). For an abandoned child, the notary would initiate the adoption process at his office once the judicial resolution of abandonment was issued. The case would then be referred to PGN for an opinion once USCIS had issued its pre-approval (following the procedures mentioned in the relinquishment cases, minus the DNA test.)

¶4. (U) Although there were probably cases of some babies being stolen and put up for adoption, most observers believe these cases were a small minority, and that the majority of the birth mothers involved willingly relinquished their children, in many cases, for a fee. We have heard that these women were paid USD 500 to 1,000 and had all their living and medical expenses paid for during their pregnancy.

The Controversy

¶5. (SBU) It was against this backdrop, in 2006 and 2007, that three AMCIT couples begin the process of adopting the three Guatemalan children in question. These children are:
-Kimberli Azucena Jimenez, born Nov.8, 2006, issued a visa December 2007 under the name Kimberli Azucena Ocheltree.
-Cindy Garcia, born Aug.10, 2006, issued a visa December 2006 under the name Cindy Colwell Thomas.
-Karen Abigail Lopez Garcia, born Jan.14, 2005, issued a visa December 2008 under the name Karen Abigail Monahan. (This child originally started as a relinquishment case, failed the DNA test, and then later went through the Guatemalan legal system as an abandonment case.)

¶6. (U) The new adoption law implemented in December 2007 resulted in the creation of the National Council on Adoptions (CNA). The new agency, in coordination with the PGN, initiated a mandatory review of all in-process adoption cases still allowed to move forward under the notarial system. PGN began conducting interviews with all birth mothers. During this process a group of women who had filed reports of stolen children were allowed access to adoption records. Three women claimed to have identified their stolen children based on photos from these records. It is unclear if the records were provided by the Attorney General's Office (MP) or PGN.

¶7. (SBU) The three women identified the following children as having been stolen:
-the Ocheltree baby allegedly is Heidy Sarahi Batz Par, kidnapped Apr.4, 2006.
-the Thomas baby allegedly is Arlene Escarleth Lopez Lopez, kidnapped Sep. 27, 2006.
-the Monahan baby allegedly is Anyeli Liseth Hernandez Rodriguez, kidnapped Nov.3, 2006.
(Note: We do not know the birth dates of the stolen children. End Note)

¶8. (SBU) Sources within CNA have told Emboffs that they have significant doubts that these women have actually identified their stolen children. Moreover, the timeline raises questions about the validity of their claims:
-the Batz Par baby would have been born early in 2006, sometime prior to her kidnapping in April. The Ocheltree baby was born in November 2006 and issued a visa 13 months later, in December 2007. For this to have been the stolen baby the adjudicating Conoff would have had to fail to notice that a child being presented as 13 month old was actually closer to two years old.
-the Lopez Lopez baby was kidnapped Sep.27, 2006. According to Conoffs here, it took a minimum of four to five months, and often much longer, to process an adoption once a child had been identified. So in order to have finalized the proceedings by December 2006, the Thomas family would have had to start the adoption process immediately after the birth

of the child in August. It would not have been possible to have finalized an adoption that only began after the child's kidnapping on September 27. It is possible, however, that the notary began the process with another baby and then switched them after the kidnapping, although this seems unlikely.

-the Hernandez Rodriguez baby was kidnapped in November 2006.

The Monahan baby's parents began adoption proceedings eight months prior to the kidnapping, in March of 2006. It is troubling that in this case the DNA failed to match the woman who claimed to be the child's birth mother and the adoption eventually went forward as an abandonment, but this does not link this child to the woman now claiming to be the baby's birth mother.

19. (SBU) On April 27, the Ambassador, Conoff, ARSO-I and USCIS' Field Office Director-Guatemala and District Director met with Guatemala's First Lady to discuss these cases. During the meeting, Torres stated that she felt a moral obligation to help the women who claim to have had their children stolen. She also said she had requested that the Guatemalan Attorney General's office begin the process of having the adoptions annulled. The Ambassador replied that the Embassy would provide any assistance to the investigation allowed by law, but that this issue was now being handled by DOJ.

110. (SBU) Cruz has long been a champion of human rights and women's rights in Guatemala. She and her NGO took up the women's rights in Guatemala. She and her NGO took up the issue of the many problems with the Guatemalan adoption system about four years ago as an outgrowth of their concern over women's rights. In the past she has called for a "truth commission" to examine all adoptions that have taken place in the last decades in Guatemala. Approximately two years ago she led a protest over the adoption issue in front of the Embassy. More recently, there have been reports in the press that Cruz engineered the ouster of PGN head Baudilio Portillo Merlos because of the irregularities with the adoption process. In March, the Secretary recognized Norma Cruz as a Woman of Courage (REFTEL). Cruz was recognized for her and her organization's work countering sexual and domestic violence in Guatemala. Since January 2008, USAID has financed a USD 25,000 sub-contract to Cruz's organization to provide legal support to victims of homicide, particularly female victims.

111. (U) On July 15 Cruz announced that she was organizing a hunger strike to raise awareness and demand justice for the

three women who claim their children were stolen. Eight days into her hunger strike, Guatemalan authorities announced the arrest of a man and women in connection with the kidnapping the Batz Par baby. On July 25, Cruz called off her strike after the Guatemalan judicial system agreed to accept her petition to review the case. Although this action was reported in the press as, "the beginning of the process of nullifying the adoptions," and Cruz cited it as a legal victory, under the Guatemalan legal system, the judiciary is required to accept a petition from a citizen. However, the publicity from her hunger strike may well have sped up the process of having the judiciary grant a review of these cases. As the children were stolen in different geographical areas, three separate lower courts are each examining a case.

After a period of review, the individual courts will decide whether the cases should be accepted for further legal action or rejected.

112. (SBU) In March and April, the Guatemalan Attorney General's office, through the Mutual Legal Assistance Treaty (MLAT), requested DOJ cooperation in obtaining DNA samples from the children in the US. These samples would then be compared to those taken from the three women in Guatemala to determine if they are the children's birth mothers. This request is currently under review by DOJ.

McFarland